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09/848,347	05/04/2001	Gi-O Jeong	1337.1033	6772
21171 7590 03/20/2007 STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER DANIEL JR, WILLIE J	
			ART UNIT	PAPER NUMBER
			2617	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/848,347

Applicant(s)

JEONG ET AL.

Examiner

Willie J. Daniel, Jr.

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-13,15 and 17-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-13,15 and 17-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to applicant's amendment filed on 12 December 2006. **Claims 1-2, 4-13, 15, and 17-27** are now pending in the present application and claims 3, 14, and 16 have been canceled. This office action is made **Final**.

### ***Claim Objections***

2. **Claim 9** is objected to because of the following informalities:
  - a. Claim 9 is improperly labeled as "Currently Amended" but the mark-up limitation "...identifier..." was presented in the amendment filed 03 May 2004. The Examiner interprets as though the limitation has been --Previously Presented-- and suggests clarifying the claim status.

See MPEP § 714 and 37 CFR 1.121(c). Appropriate correction is required.

3. This list of examples is not intended to be exhaustive. The Examiner respectfully requests the applicant to review all claims and clarify the issues as listed above as well as any other issue(s) that are not listed.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-2, 5-6, 12-13, 15, 18-19, and 24-25** are rejected under 35 U.S.C. 102(b) as being anticipated by **Fette et al.** (hereinafter Fette) (US 6,052,600).

Regarding **claim 1**, Fette discloses a method of distributing application software applied to an application software distribution system (114) (see col. 2, lines 34-58; col. 3, lines 22-42; Figs. 1, 3, and 4), comprising the steps of:

determining that files necessary for a mobile station (200) to receive a service are not stored at the mobile station (200) (see col. 3, lines 15-21, 43-57; col. 7, line 50 - col. 8, line 10; col. 4, lines 26-36; Fig. 3), where the radio (200) receives software and license to use a service;

a) initializing to distribute application software files, being the necessary files, to the mobile station (200) (see col. 4, lines 30-34; col. 3, lines 15-21, 43-57; col. 7, line 50 - col. 8, line 10), where the mobile is being prepared for a software upgrade;

b) receiving an application software transmission/reception requiring message from the mobile station (200) (see col. 4, lines 26-29);

c) if the application software transmission requiring message is received, transmitting the application software files to the mobile station (200) (see col. 4, lines 25-36; col. 3, lines 22-42; Fig. 3); and

d) if the application software reception requiring message is received, receiving the application software files from the mobile station (200) (see col. 9, lines 20-28; Fig. 4), where the mobile user transmits information related to applications contained on the mobile station which will update the database of the server.

Regarding **claim 2**, Fette discloses the method as recited in claim 1, before a), further comprises: e) generating a thread in the application software distribution system (see col. 4, lines 25-35; Fig. 3), where the system provides the software instructions to carry out the software upgrade or configuration in which the thread would be inherent as evidenced by the fact that one of ordinary skill in the art would clearly recognize.

Regarding **claim 5**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 2), in addition Fette further discloses the method as recited in claim 2, wherein d) comprises:

d1) constructing a reception plan in response to an application software reception requiring message (see col. 4, lines 25-36; Fig. 3), where the constructing plan would be inherent as evidenced by the fact that one of ordinary skill in the art would clearly recognize;

d2) receiving application software file packets (see col. 4, lines 25-36; col. 8, lines 16-21; Fig. 3);

d3) determining whether there is an error in the application software file packets (see col. 8, lines 22-31; col. 8, line 49 - col. 9, line 13; Figs. 3 and 4); and

d4) if there is no error in the application software file packet, storing the application software file packets (see col. 5, lines 41-48; col. 7, lines 6-12; col. 8, lines 22-31; col. 8, line 49 - col. 9, line 13; Figs. 3 and 4).

Regarding **claim 6**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 5), in addition Fette further discloses the method as recited in claim 5, before b), further comprises:

f) confirming that the mobile station (200) is a service subscriber (see col. 8, lines 3-14; Figs. 3 and 4), where the license is checked to make sure the mobile station is a subscriber.

Regarding **claim 12**, Fette discloses a method of distributing an application software file applied to a mobile station (200) (see col. 2, lines 34-58; col. 3, lines 22-42; Figs. 1, 3, and 4), comprises:

determining that a file necessary for a mobile station (200) to receive a service is not stored at the mobile station (200), the necessary file being the application software file (see col. 3, lines 15-21, 43-57; col. 7, line 50 - col. 8, line 10; col. 4, lines 26-36; Fig. 3), where the radio (200) receives software and license to use a service;

a) performing an initialization in the mobile station (200) (see col. 4, lines 30-34), where the mobile is being prepared for a software upgrade;

b) transmitting an application software transmission/reception requiring message to an application software distribution system (114) (see col. 4, lines 26-33);

c) if the application software transmission requiring message is transmitted, receiving the application software file from the application software distribution system (114) (see col. 4, lines 25-36; Fig. 3); and

d) if the application software reception requiring message is transmitted, transmitting the application software file (see col. 4, lines 25-36; Figs. 3 and 4), where the software file is transmitted to the mobile station.

Regarding **claim 13**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 12), in addition Fette further discloses the method as recited in claim 12, after c), further comprising:

e) installing the application software file (see col. 4, line 36; Fig. 3), where the mobile radio loads the software.

Regarding **claim 15**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 12), in addition Fette further discloses the method as recited in claim 12, after b), further comprising:

g) receiving a response to the application software reception requirement message (see col. 4, lines 34-36; Figs. 3 and 4).

Regarding **claim 18**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 15), in addition Fette further discloses the method as recited in claim 15, wherein e) comprises:

e1) receiving an application software transmission completion packet from the application software distribution system (114) (see col. 9, lines 5-14; col. 9, line 66 - col. 10, line 7; Fig. 4);

e2) determining whether there is an error in the application software file (see col. 8, lines 22-31; col. 8, line 49 - col. 9, line 13; Figs. 3 and 4); and

e3) if there is no error in the application software file, installing the application software file (see col. 5, lines 41-48; col. 7, lines 6-12; col. 8, lines 22-31; col. 8, line 49 - col. 9, line 13; Figs. 3 and 4).

Regarding **claim 19**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 18), in addition Fette further discloses the method as recited in claim 18, further comprising:

performing a data backup for information concerned with the user of the mobile station (200) through a data backup equipment, when the mobile station (200) is not used for a constant period by automatically checking a using period of the user of the mobile station (see col. 9, lines 24-48; Figs. 1 and 4), where the server and record computer keeps track of data such as programs, records, license grants, and billing information associated with the user.

Regarding **claim 24**, Fette discloses a computer readable record medium storing instructions for executing a method for distributing application software applied to an application software distribution system (114) (see col. 2, lines 34-58; col. 3, lines 22-42; Figs. 1, 3, and 4), the method comprising:

determining that files necessary for a mobile station (200) to receive a service are not stored at the mobile station (200) (see col. 3, lines 15-21, 43-57; col. 7, line 50 - col. 8, line 10; col. 4, lines 26-36; Fig. 3), where the radio (200) receives software and license to use a service;

a) initializing to distribute application software files, being the necessary files, to the mobile station (200) (see col. 4, lines 30-34; col. 3, lines 15-21, 43-57; col. 7, line 50 - col. 8, line 10);

b) receiving an application software transmission/reception requiring message from the mobile station (200) (see col. 4, lines 26-29);



c) if the application software transmission requiring message is received, transmitting the application software files to the mobile station (200) (see col. 4, lines 25-36; Fig. 3); and

d) if the application software reception requiring message is received, receiving the application software files from the mobile station (200) (see col. 9, lines 20-28; Fig. 4), where the mobile user transmits information related to applications contained on the mobile station which will update the database of the server.

Regarding **claim 25**, Fette discloses a computer readable record medium storing instructions for executing a method for distributing application software applied to a mobile station (200) (see col. 2, lines 34-58; col. 3, lines 22-42; Figs. 1, 3, and 4), the method comprising:

determining that a file necessary for the mobile station (200) to receive a service is not stored at the mobile station (200) (see col. 3, lines 15-21,43-57; col. 7, line 50 - col. 8, line 10; col. 4, lines 26-36; Fig. 3), where the radio (200) receives software and license to use a service;

a) performing an initialization in the mobile station (200) (see col. 4, lines 30-34), where the mobile is being prepared for a software upgrade;

b) transmitting an application software transmission/reception requiring message to an application software distribution system (114) (see col. 4, lines 26-33);

c) if the application software transmission requiring message is transmitted, receiving an application software file, being the necessary file, from the application software distribution system (114) (see col. 4, lines 25-36; col. 3, lines 15-21,43-57; col. 7, line 50 - col. 8, line 10; Fig. 3); and

d) if the application software reception requiring message is transmitted, transmitting the application software file (see col. 4, lines 25-36; Figs. 3 and 4), where the software file is transmitted to the mobile station.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 26, 4, 7-8, 27, and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (**US 6,052,600**) in view of **Kawamata et al.** (hereinafter Kawamata) (**US 6,820,259 B1**).

Regarding **claim 26**, Fette discloses the method as recited in claim 2, wherein c) includes:

c2) opening an application software file of the application software files to be transmitted (see col. 3, lines 22-41; col. 4, lines 34-35), where the opening of the application would be inherent to prepare the file for transmitting to the radio as evidenced by the fact that one of ordinary skill in the art would clearly recognize; and

c3) transmitting the application software file to the mobile station (200) (see col. 4, lines 34-35). Fette does not specifically disclose having the feature constructing a transmission plan in the application software distribution system and transferring a transmission plan message to the mobile station via the application software distribution system. However, the

examiner maintains that the feature constructing a transmission plan in the application software distribution system and transferring a transmission plan message to the mobile station via the application software distribution system was well known in the art, as taught by Kawamata.

In the same field of endeavor, Kawamata discloses the feature constructing a distribution software list which reads on the claimed "transmission plan" in the software distribution station (100) which reads on the claimed "application software distribution system" (see col. 3, lines 11-30, 55-62; col. 4, lines 15-25; Figs. 1-7), where the software distribution station (100) develops a list of software that is to be distributed, and

transferring a transmission plan message to the terminal apparatus (150) which reads on the claimed "mobile station" via the application software distribution system (100) (see col. 3, lines 11-30, 35-36; col. 4, lines 15-25, 48-51; Figs. 1-7), where the terminal apparatus (150) receives the software distribution list in which there must be a message containing the software distribution list. As a note, Kawamata further discloses the feature determining that files necessary for a mobile station (150) to receive a service are not stored at the mobile station (150) (see col. 6, lines 9-15; Figs. 4, 5 "ref. 500", and 13 "ref. 1315").

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Kawamata to have the feature constructing a transmission plan in the application software distribution system and transferring a transmission plan message to the mobile station via the application software distribution system, in order to provide a distribution system capable of correctly and easily updating software, as taught by Kawamata (see col. 1, lines 36-38).

Regarding **claim 4**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 26), in addition Fette further discloses the method as recited in claim 26, before c1) further comprises:

c4) transmitting a response message to the application software transmission requiring message (see col. 4, lines 25-36; Fig. 3), where the message is sent containing the software.

Regarding **claim 7**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 4), in addition Fette further discloses the method as recited in claim 4, further comprises:

c5) if all of the application software files are transmitted, transmitting an application software transmission completion packet to the mobile station (see col. 9, lines 5-14; col. 9, line 66 - col. 10, line 7; Fig. 4);

c6) receiving an application software transmission requirement releasing message from the mobile station (200) (see col. 9, line 5-14), where a releasing message sent by the mobile would be inherent for successful completion of application transmission; and

c7) terminating the thread (see col. 9, lines 5-14; col. 9, line 66 - col. 10, line 7; Fig. 4).

Regarding **claim 8**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 7), in addition Fette further discloses the method as recited in claim 7, wherein the application software distribution system (114) stores charging information to make a user of the mobile station (200) chargeable for an execution of said application software program (see col. 3, line 58 - col. 4, line 2; col. 4, lines 37-39).

Regarding **claim 27**, Fette discloses the method as recited in claim 12, wherein c) includes:

c2) constructing a reception plan (see col. 4, lines 26-36; Fig. 3), where the plan would be inherent for receiving of software;

c3) receiving an application software transmission start packet from the application software distribution system (see col. 3, lines 22-41; col. 4, lines 26-36; Fig. 3), where the start packet would be inherent in the transmitting of the software to the mobile station;

c4) standing by to receive the application software file (see col. 3, lines 22-41; col. 4, lines 26-36; Fig. 3), where the mobile station is prepared to receive software;

c5) receiving the application software file from the application software distribution system (114) (see col. 3, lines 22-41; col. 4, lines 33-39), where the mobile station (200) receives the software from the SDC (114); and

c6) storing the application software file (see col. 3, lines 22-41; col. 4, lines 33-39; col. 5, lines 40-49), where the mobile station stores the software in the memory. Fette does not specifically disclose having the feature receiving a transmission plan message from an application software distribution system. However, the examiner maintains that the feature receiving a transmission plan message from an application software distribution system was well known in the art, as taught by Kawamata.

Kawamata further discloses the feature receiving a transmission plan message from an application software distribution system (100) (see col. 3; lines 11-30, 35-36, 55-62; col. 4, lines 15-25, 48-51; Figs. 1-7), where the terminal apparatus (150) receives the software distribution list in which there must be a message containing the software distribution list and the list (e.g., plan) indicates the reception order and listing of programs to be received. As a note, Kawamata further discloses the feature determining that a file necessary for the mobile

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station (150) to receive a service is not stored at the mobile station (150), the necessary file being the application software file (see col. 6, lines 9-15; Figs. 4, 5 “ref. 500”, and 13 “ref. 1315”). Also, Kawamata further teaches of a start signal (see col. 4, lines 25-30), where start signal (e.g., start packet) informs the terminal apparatus (150).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Kawamata to have the feature receiving a transmission plan message from an application software distribution system, in order to provide a distribution system capable of correctly and easily updating software, as taught by Kawamata (see col. 1, lines 36-38).

Regarding **claim 17**, the combination of Fette and Kawamata discloses every limitation claimed, as applied above (see claim 27), in addition Fette further discloses the method as recited in claim 27, after c5), further comprising:

c7) performing an error checking of the application software file (see col. 8, lines 16-32; col. 9, lines 5-13; Fig. 3 and 4).

**Claims 9-11 and 20-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (US 6,052,600) in view of **Criss et al.** (hereinafter Criss) (US 6,735,434 B2).

Regarding **claim 9**, Fette discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses of the method wherein a) comprises:

a1) generating a program identifier (PID) allocated to transmit the application software transmission plan message (see col. 4, lines 25-36), where a program identity would be

inherent as evidenced by the fact that one of ordinary skill in the art would clearly recognize. Fette does not specifically disclose having the feature storing the PID and an internet protocol address allocated to transmit the application software. However, the examiner maintains that the feature storing the PID and an internet protocol address allocated to transmit the application software was well known in the art, as taught by Criss.

In the same field of endeavor, Criss discloses the feature storing the PID and an internet protocol (IP) address allocated to transmit the application software (see col. 11, line 63 - col. 12, line 26; Figs. 4, 7a-b).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Criss to have the feature storing the PID and an internet protocol address allocated to transmit the application software, in order to have a system and method in which software upgrades are provided wirelessly to mobile devices which does not require significant down time and service costs, as taught by Criss (see col. 2, lines 45-52).

Regarding **claim 10**, the combination of Fette and Criss discloses everything claimed, as applied above (see claim 9), in addition Fette further discloses of performing a data backup for information concerned with the user of the mobile station (200) through a data backup equipment, when the mobile station is not used for a constant period by automatically checking a using period of the user of the mobile station (200) (see col. 9, lines 24-48; Figs. 1 and 4), where the server and record computer keeps track of data such as programs, records, license grants, and billing information associated with the user.

Regarding **claim 11**, the combination of Fette and Criss discloses everything claimed, as applied above (see claim 10), in addition Fette further discloses wherein the application software distribution system (114) differentially provides a storing space in accordance with an age or an occupation of the user of the mobile station (200) (see col. 4, lines 4-16; col. 9, lines 39-49; Figs. 1 and 4), where the record keeping is based on the user's occupation.

Regarding **claim 20**, the combination of Fette and Criss discloses everything claimed, as applied above (see claim 12), in addition Fette further discloses the method as recited in claim 12, wherein the step a) comprises:

a1) generating a program identifier (PID) allocated to transmit the application software transmission plan message (see col. 4, lines 25-36), where a program identity would be inherent. Fette does not specifically disclose having the feature storing the PID and an internet protocol address allocated to transmit the application software are stored. However, the examiner maintains that the feature storing the PID and an internet protocol address allocated to transmit the application software are stored was well known in the art, as taught by Criss.

Criss further discloses the feature storing the PID and an internet protocol (IP) address allocated to transmit the application software are stored (see col. 11, line 63 - col. 12, line 26; Figs. 4 and 7a-b).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Criss to have the feature storing the PID and an internet protocol address allocated to transmit the application software are stored, in order to have a system and method in which software upgrades are provided



wirelessly to mobile devices which does not require significant down time and service costs, as taught by Criss (see col. 2, lines 45-52).

Regarding **claim 21**, the combination of Fette and Criss discloses everything claimed, as applied above (see claim 20), in addition Fette further teaches wherein the application software distribution system (114) differentially provides a storing space in accordance with an age or an occupation of the user of the mobile station (200) (see col. 4, lines 4-16; col. 9, lines 39-49; Figs. 1 and 4), where the record keeping is based on the user's occupation.

Regarding **claim 22**, Fette discloses everything claimed as applied above in claim 21. Fette does not specifically disclose having the feature wherein the mobile station deletes the application software or transmits the application software to the storing space of the application software distribution system, if there is a shortage of storing space in the mobile station. However, the examiner maintains that the feature wherein the mobile station deletes the application software or transmits the application software to the storing space of the application software distribution system, if there is a shortage of storing space in the mobile station was well known in the art, as taught by Criss.

Criss further discloses the feature wherein the mobile station deletes the application software or transmits the application software to the storing space of the application software distribution system, if there is a shortage of storing space in the mobile station (see col. 14, lines 31-62), where the mobile station deletes the old version to save storing space in the memory.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Criss to have the feature

wherein the mobile station deletes the application software or transmits the application software to the storing space of the application software distribution system, if there is a shortage of storing space in the mobile station, in order to have a system and method in which software upgrades are provided wirelessly to mobile devices which does not require significant down time and service costs, as taught by Criss (see col. 2, lines 45-52).

Regarding **claim 23**, Fette discloses everything claimed as applied above in claim 22. Fette does not specifically disclose having the feature automatically connecting to a server designated by a uniform resource locator (URL) of a specified site, when the application software file distributed from the application software distribution system is executed, the URL being set inside the application software. However, the examiner maintains that the feature automatically connecting to a server designated by a uniform resource locator (URL) of a specified site, when the application software file distributed from the application software distribution system is executed, the URL being set inside the application software was well known in the art, as taught by Criss.

Criss further discloses the feature automatically connecting to a server designated by a uniform resource locator (URL) of a specified site, when the application software file distributed from the application software distribution system is executed, the URL being set inside the application software (see col. 19, lines 56 - col. 20, line 19; Figs. 7a-e and 14a-d).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette and Criss to have the feature automatically connecting to a server designated by a uniform resource locator (URL) of a specified site, when the application software file distributed from the application software

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distribution system is executed, the URL being set inside the application software, in order to have a system and method in which software upgrades are provided wirelessly to mobile devices which does not require significant down time and service costs, as taught by Criss (see col. 2, lines 45-52).

***Response to Arguments***

6. Applicant's arguments filed 12 December 2006 have been fully considered but they are not persuasive.

The Examiner respectfully disagrees with applicant's arguments as the applied reference(s) provide more than adequate support and to further clarify (see the above claims for relevant citations and comments in this section).

7. Regarding applicant's argument of claim 1 on pg. 10, section II., 5<sup>th</sup> paragraph, "...no teaching that the requested updates are necessary for a mobile station to receive a service...", the Examiner respectfully disagrees. Fette clearly discloses determining that files necessary for a mobile station (200) to receive a service are not stored at the mobile station (200) (see col. 3, lines 15-21, 43-57; col. 7, line 50 - col. 8, line 10; col. 4, lines 26-36; Fig. 3), where the radio (200) receives software and license to use a service. Furthermore, a user (e.g., *paying* subscriber) of a radio (200) pays for services and functionality in which the updating of files (e.g., software and/or licenses) is to receive files not stored on the radio. The files are necessary to provide the user's radio with files necessary to maintain (or provide new) services, operations, functionality, and/or compatibility for the purpose of communicating via the network.

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8. Furthermore, as part of this response section, Kawamata is considered applicable to the claim limitations as below. See MPEP for pertinent text of 35 U.S.C. § 102(e).

**Claims 1, 12, and 24-25** are rejected under 35 U.S.C. 102(e) as being anticipated by **Kawamata et al.** (hereinafter Kawamata) (US 6,820,259 B1).

Regarding **claims 1, 12, and 24-25**, Fette discloses a method of distributing application software applied to an application software distribution system (e.g., 100) (see abstract; Figs. 1-20), comprising the steps of:

determining that files necessary for a mobile station (e.g., 150) to receive a service are not stored at the mobile station (see Figs. 4 “ref. 440” and 5);

a) initializing to distribute application software files, being the necessary files, to the mobile station (150) (see Figs. 3-11);

b) receiving an application software transmission/reception requiring message from the mobile station (150) (see col. 12, lines 27-29,35-40,60-63; Figs. 1-20);

c) if the application software transmission requiring message is received, transmitting the application software files to the mobile station (150) (see Figs. 1-20); and

d) if the application software reception requiring message is received, receiving the application software files from the mobile station (150) (see Figs. 1-20).

9. Furthermore, as part of this response section, 35 U.S.C. 101 is considered applicable as below. See MPEP for pertinent text of 35 U.S.C. § 101.

**Claims 24-25** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Claims 24-25** are drawn to a "...computer readable medium..." (descriptive material) *per se* and considered non-statutory subject matter.

- a. **Claims 24-25** include the limitation "...computer readable medium..." as recited in line(s) 1 of claim 24.

Regarding **claims 24-25**, the claims failed to claim a computer-readable medium encoded (or embodied) with a computer program which defines structural and functional interrelationships between the computer program and the rest (i.e., other elements) of the computer which permit the computer program's functionality to be realized. The Examiner recommends that the applicant clarify the claim language as supported by the specification. What element(s) is executing or performing said instructions?

The language of the claim(s) raises a question as to whether the claim is directed merely to an abstract idea that does not result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter.

See MPEP § 2106.IV.B.1(a). [Data structures not claimed as **embodied in computer-readable media** are descriptive material *per se* and are not statutory because they are **not capable of causing functional change in the computer**. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures **do not define any structural and functional interrelationships between**

**the data structure and other claimed aspects of the invention** which permit the data structure's functionality to be realized.]

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willie J. Daniel, Jr. whose telephone number is (571) 272-7907. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WJD,JR/

WJD,JR  
13 March 2007



CHARLES N. APPIAH  
SUPERVISORY PATENT EXAMINER